# STATE OF MICHIGAN

# COURT OF APPEALS

WAYNE COUNTY POLICE ASSOCIATION,

Petitioner-Appellant,

v

WAYNE COUNTY AIRPORT POLICE DEPARTMENT, and SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 502,

Respondents-Appellees.

UNPUBLISHED
February 14, 2003

No. 235669
MERC
LC No. 00-000102

Before: Murphy, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Petitioner appeals as of right from a Michigan Employment Relations Commission (MERC) decision and order dismissing its petition seeking to represent respondent, Wayne County Airport Police Department (hereinafter "Airport Police"), and finding the incumbent bargaining unit, respondent, Service Employees International Union, Local 502 (hereinafter "Local 502"), as the appropriate bargaining unit. We affirm.

Petitioner first argues on appeal that the MERC committed clear error by refusing to conduct a representation election where a group of Act 312[1] eligible employees, the Airport Police, filed a petition to sever from Local 502, which is comprised of employees, excluding the Airport Police, who are not Act 312 eligible.[2]

[1] Act 312 provides for compulsory, binding interest arbitration of labor disputes in public police and fire departments. MCL 423.231; *Capitol City Lodge No 141, Fraternal Order of Police v Ingham Co Bd of Comm'rs*,155 Mich App 116, 117-118; 399 NW2d 463 (1986). The statute reflects the Legislature's concern that employees of public police and fire departments, who provide vital services to their communities and who are prohibited by law from striking, have a binding procedure for resolution of labor disputes which is more expeditious, more effective, and less expensive than courts. MCL 423.231; *Capitol City Lodge*, *supra* at 118.

[2] As noted by the MERC in its decision and order, there is a question as to the Act 312 eligibility
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The decisions of the MERC are reviewed on appeal pursuant to Const 1963, art 6, § 28, and MCL 423.216(e). *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 322; 550 NW2d 228 (1996). The MERC's findings of fact are conclusive if they are supported by competent, material, and substantial evidence on the record considered as a whole. *Id.* The MERC's legal determinations may not be disturbed unless they violate a constitutional or statutory provision or they are based on a substantial and material error of law. *Id.* at 323, citing MCL 24.306(1)(a), (f). The determination of an appropriate bargaining unit is a question of fact for the MERC to decide. *Michigan Education Ass'n v Alepna Community College*, 457 Mich 300, 307; 577 NW2d 457 (1998). This Court will not set aside findings merely because alternative findings also could have been supported by substantial evidence on the record. *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994).

The MERC's primary objective is to constitute the largest unit that, under the circumstances of the case, would be the most compatible with the effectuation of the purposes of the law and would include in a single unit all common interests. *Police Officers Ass'n of Michigan v Grosse Pointe Farms*, 197 Mich App 730, 736; 496 NW2d 794 (1993). The MERC has consistently resisted disrupting established bargaining relationships. *Id.* The MERC has placed a heavy burden on parties seeking to disturb an established bargaining unit and has determined that only where the unit is per se inappropriate or an extreme divergence in community of interest is demonstrated will the MERC break up an established unit. *Ferris State University*, 2002 MERC Lab Op (Docket Nos. UC00 E-19 and R01 F-078, issued 9/3/02); *Huron County Bd of Comm'rs*, 1995 MERC Lab Op 505, 509. Petitioner does not challenge this standard.

The MERC, without an evidentiary hearing,[3] found that Local 502 would not be per se inappropriate as a bargaining unit for the Airport Police even if the Airport Police were Act 312 eligible. The MERC has previously expressed a policy that Act 312 employees should be in bargaining units separate from those of non-Act 312 employees. *City of Southfield (Public Safety)*, 1993 MERC Lab Op 36, 42. However, the MERC has also taken the position that this policy does not require separation in existing bargaining units containing both Act 312 and non-Act 312 employees. *Twp of Genesee*, 1994 MERC Lab Op 210, 216; *Ottawa County*, 1992 MERC Lab Op 370. Accordingly, it would not be per se inappropriate for Act 312 employees to

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of the Airport Police because the employees, conceptually, do not work for a critical-service department. *Michigan Fraternal Order of Police v Kent Co*, 174 Mich App 440, 442; 436 NW2d 690 (1989). In *Michigan Fraternal Order*, this Court found that airport security officers and rescue equipment operators were not Act 312 eligible because a work stoppage in their department would not threaten community safety. *Id.* at 444. However, Local 502 does not challenge petitioner's claim that the Airport Police are Act 312 eligible. At the hearing, petitioner offered that the Airport Police were Act 312 eligible because the employees perform other duties such as respond to school bomb threats. For the purposes of this opinion, the Act 312 status of the Airport Police need not be addressed.

[3] The MERC is not required to hold an evidentiary hearing in every case regarding a representation question, and the decision to hold a hearing is within the discretion of the MERC. MCL 423.212(b); *Sault Ste Marie Area Public Schools v Michigan Education Ass'n*, 213 Mich App 176, 182; 539 NW2d 565 (1995).

be in a bargaining unit with employees who are not Act 312 eligible, and petitioner fails to cite any case law, statutory provisions, or MERC decisions that require absolute severance in a situation such that exists here. Therefore, with regard to per se inappropriateness, even if it is accepted that the Airport Police are Act 312 employees and the remaining employees in Local 502 are not, there is no basis for reversal, where the decision is not contrary to law. That being said, we do find that petitioner failed to argue or show, here or below, that all remaining members of Local 502 are not Act 312 eligible, where it addresses and discusses court and jail officers, but fails to address officers whose duties concern drug law enforcement, parks, internal affairs, warrant enforcement, secondary roads, drunk driving, friend of the court enforcement, special services, municipal support enforcement, and marine enforcement. Petitioner's own documents presented to the MERC acknowledge the existence of these Local 502 members. There is no merit to petitioner's argument.

Petitioner next argues that a representation election should be conducted because an extreme divergence in community of interest has been established between the Airport Police and other members of Local 502. We disagree.

Pursuant to § 13 of the Public Employment Relations Act (PERA), MCL 423.213, the "unit appropriate" for collective bargaining purposes is to be determined by MERC as provided in § 9e of the Michigan labor mediation act, MCL 423.9e. *Michigan Ass'n of Public Employees v Michigan AFSCME Council 25*, 172 Mich App 761, 764; 432 NW2d 748 (1988). Once again, a primary objective of the commission is to constitute the largest unit which, in the circumstances of the particular case is most compatible with the effectuation of the purposes of the law and to include in a single unit all common interests, *Police Officers Ass'n, supra* at 736, and the policy of the MERC has been to avoid the fractionalization or multiplicity of bargaining units, *Muskegon Co Professional Command Ass'n v County of Muskegon*, 186 Mich App 365, 373; 464 NW2d 908 (1990). The touchstone of an appropriate bargaining unit is a common interest of all it members in the terms and conditions of employment that warrants inclusion in a single bargaining unit and the choosing of a bargaining unit. *Id*. This Court will not substitute its judgment for that of the MERC with regard to the appropriate bargaining unit unless there is a clear showing of error. *Id.* at 374.

As discussed, *supra*, in order to break up an established bargaining unit that is not per se inappropriate, petitioner must show there is an "extreme divergence in community of interest." A community of interests includes, among other considerations, similarities in duties, skills, working conditions, job classifications, employee benefits, and the amount of interchange or transfer of employees. *Police Officers Ass'n, supra* at 736-737.

The MERC, ruling that there was no extreme divergence in community of interest, stated:

> The fact that the duties of airport police officers may differ in some degree from other employees within the bargaining unit does not detract from the fact that all employees within the bargaining unit perform, or support, law enforcement functions. We find that this is a controlling community of interest factor which overrides any minor differences in job responsibilities

We cannot say that this finding was not supported by competent, material, and substantial evidence, where the record clearly indicates that Local 502 members are involved in law enforcement functions.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Janet T. Neff